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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 15th November 2012

No. 9332—IR-(ID)-5/2010-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th September 2012 in I. D. Case No. 4 of 2010 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of SAIL, Rourkela Plant, Rourkela and their workman Shri Akshaya Kumar Mohanty, PL. No. 884432 represented through Steel Employees Association, Rourkela was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
SAMBALPUR

INDUSTRIAL DISPUTE CASE NO. 4 OF 2010

Dated the 12th September 2012

Present :

Shri Srikanta Mishra, LL.M.,
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of SAIL, .. First Party—Management
Represented by the Executive
Director, P & A., SAIL, Rourkela Steel Plant,
Rourkela, Dist. Sundargarh.

And

Their workman .. Second Party—Workman
Shri Akshaya Kumar Mohanty,
PL. No. 884432 represented through the
General Secretary, Steel Employees Association,
Rourkela, B. 40, Sector-7, Rourkela-3.

Appearances :

Shri L. K. Nayak,
Deputy Manager (Law). .. For the First Party—Management

Shri R. K. Mohanty, Advocate,
Sambalpur. .. For the Second Party—Workman

AWARD

This award arises out of a reference made by the Government of Orissa (Now Odisha), Labour & Employment Department, under the power conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short the "Act") vide Order under Memo. No. 827 (5)-LE., dated the 5th February 2010. The dispute involved, under the schedule of reference is as follows :—

"Whether the alleged illegal punishment imposed upon Shri Akshaya Kumar Mohanty, PL. No. 884432, Senior Carriage Wagon Technician, by the Management of SAIL, Rourkela Steel Plant vide their Letter reference No. 377—PL-TRM, Dt. 5-9-2007 by way of treating the 'period of suspension from Dt. 16-11-2005 till Dt. 5-9-2007, as such' is legal and/or justified ? If not, what relief he is entitled to ?"

2. The case of the second party (workman) in brief is that while he was working under the first party (management) as Senior Carriage Wagon Technician, T. & R.M. Department of Rourkela Steel Plant vide PL. No. 884432, a Criminal case vide G. R. case No. 1740 of 2005 was instituted against him by the Police on Dt. 27-9-2005. The first party management suspended him from duty vide Letter No. 697—11/2846, Dt. 16-11-2005 with immediate effect until disposal of the Criminal trial revealing that the allegations are of serious nature involving moral turpitude. The workman claims that he was honourably acquitted by the Court of Judicial Magistrate, First Class, Rourkela in Trial No. 478 of 2006 vide Judgement, Dt. 10-5-2007. After acquitted he appealed the management for revocation of his suspension and the later revoked the suspension order on Dt. 5-9-2007 treating the period of suspension from Dt. 16-11-2005 to 5-9-2007 as such. He requested the management to reconsider the order and treat his suspension period as duty and to pay full wages with other consequential reliefs but the same was not considered. The Union, Steel Employees Association, Rourkela also requested the management for reconsideration of their action and give justice to the workman. The matter was taken up by the conciliation officer who referred for adjudication. According to the workman, he was deprived of getting annual increments for the year 2006 and 2007 leading to cumulative financial loss for the balance service of about 19 years having its impact on Provident Fund, Gratuity and revision of pay. The workman prays to order that his suspension period is to be treated as on duty and direct the management to pay full salary after adjustment of the subsistence allowance and also payment for consequential financial benefits.

3. The management filed their written statement wherein they contend that the reference has been made in a mechanical manner and as such bad, illegal and not maintainable. It is their specific case that since the workman was suspended in view of the institution of the Criminal Case, the same was not in the nature of punishment. The suspension was in accordance with the

Certified Standing Orders pursuant to the intimation received about his involvement in a Criminal Case for committing offence under Arms Act and Indian Penal Code followed by his arrest and detention in judicial custody pending trial. The suspension was purely administrative in nature and not connected with any Disciplinary proceeding. Regarding delay in reinstatement it is the case of the management that after the appeal period against the acquittal judgment was over, the matter was reviewed and the suspension order was vacated. The management denies its liability to pay full wages to the workman for the period of his suspension on the ground that they could not avail his service during the said period with such averments the first party submit that their action should be held just, legal and proper and as such the workman is not entitled to any relief.

4. The second party workman after receipt of the written statement, filed a rejoinder in which he challenged the stand of the management and contended that the period of his suspension should be treated as on duty and he should be granted full salary benefits including annual increments.

5. On the basis of the pleadings of the parties, the following issues have been settled for adjudication.

ISSUES

- (i) "Whether the alleged illegal punishment imposed upon Shri Akshaya Kumar Mohanty, PL. No. 884432, Senior Carriage Weapon Technician, by the management of SAIL, Rourkela Steel Plant vide their letter reference No. 377—PL-TRM, Dt. 5-9-2007 by way of treating the "period of suspension from Dt. 16-11-2005 till Dt. 5-9-2007, as such" is legal and/or justified ?
- (ii) If not, what relief he is entitled to ?"

6. The workman examined himself as the sole witness and proved several documents which were marked Ext. W-1 to W-9. From the side of the first party management one Mansoor Ali working as Senior Manager personnel in Traffic and Raw Material Department of Rourkela Steel Plant was examined. Though this witness Ext. M-1 to Ext.-4 were proved.

FINDINGS

7. *Issue No. (i)*—There is no dispute that Shri Akshaya Kumar Mohanty (PL. No. 884432) is a workman under the Steel Authority of India Limited, Rourkela, assigned with duty as Senior Carriage Wagon Technician. There is also no dispute that a Criminal case vide G. R. Case No. 1740 of 2005 was instituted against him by the Rourkela police with an allegation of illegal possession of arms punishable under Section 25 (L. B.) (a) of the Arms Act. The management has admitted that on receipt of information regarding institution of Criminal case and the arrest of the workman, they suspended him on Dt. 16-11-2005. The original suspension order has been marked as Ext. W-3. In this document it is specifically mentioned that the action is being taken to prosecute him in a Court of Law for an offence under Section 25 (L. B.) (a) Arms Act which is of serious nature involving moral turpitude. For that reason he was placed under suspension until disposal of Criminal Trial in accordance with Order No. 30 (ii) (h) of the Certified Standing Order of the Company. The workman was further directed that he has to surrender his identity card and during the period of suspension he shall not enter the work premises without permission of the competent authority. In the suspension

order it was further specified that during the suspension period he will be entitled to get subsistence allowance at admissible rate and that he shall not engage himself in any other employment, business, profession or vocation. There is no allegation that the workman has violated any of the direction imposed upon him in the suspension order.

8. It is not disputed that the workman was acquitted in the aforesaid G. R. Case which was tried by the Learned Judicial Magistrate, First Class, Rourkela. During course of hearing the workman has filed the certified copy of the judgment of the learned J.M.F.C., Rourkela, Dt. 10-5-2007 in G. R. Case No. 1740 of 2005 (Arising out of Sector 19, P.S. Case No. 111, Dt. 27-9-2005). On perusal of the judgment I find the learned J.M.F.C., Rourkela having considered the facts and circumstances of the case and scrutinising the evidence on record held that the prosecution miserably failed to prove its case against the accused (the present workman) under Section 25 (L.B.) (a) of the Arms Act and he was accordingly found not guilty and acquitted from the charge. The learned Court directed to enter the case as "Mistake of fact". It reveals from the evidence adduced by the management that A.G.M., Incharge Personnel, IR & JC for the Rourkela Steel Plant made a communication to the Superintendent of Police, Rourkela requesting him to intimate whether any appeal has been preferred against the order of acquittal of Shri Mohanty. A copy of the said communication, Dt. 31-5-2007 has been marked as Ext. M-4. There is no material on record to show that the finding of the Learned J.M.F.C., Rourkela was challenged in any higher forum. The management has no personal knowledge regarding the alleged involvement of the accused in possession of arms. After a full fledged trial, the workman was found to be not guilty and none of the allegations against him was proved in the trial court. Therefore, it cannot be said that the workman is liable to any punishment by the management, for institution of the Criminal case and trial of the same.

9. Admittedly, the workman after being acquitted in the Criminal trial, approached the management for withdrawal of the suspension order and allowing him to join his duty. During the course of hearing, a copy of letter Dt. 21-5-2007 of the workman sent to the A.G.M. (TRM) Department, Rourkela Steel Plant containing his prayer as above, has been marked as Ext. W-6 without any objection by the management. In Ext. W-6 it is clearly mentioned that the workman was acquitted from the Criminal charge and a xerox copy of the judgment was enclosed for perusal and necessary action. The management without revoking the suspension order immediately, took time and ultimately vacated the said order vide their order, Dt. 5-9-2007 treating the period of suspension "as such". A copy of the said order communicated to the workman by the A.G.M. (T & RM) CW has been filed vide Annexure-4 with the claim statement of the second party. The workman has clearly deposed that the management vacated the suspension order and allowed him to resume duty on Dt. 5-8-2007 but treated the period of suspension as such. His representation to treat the suspension period as on duty was not considered and that he was not allowed to get the due wage and salary deducting the subsistence allowance. It is admitted by the management that the annual increment of the workman for the suspended period has not been sanctioned. Admittedly, the workman has not been paid full wages for the suspension period and besides that he was not allowed the service benefits including increments which would have been sanctioned, had there been no criminal case instituted against him. Although the management claim that no punishment was imposed upon the workman, I find, the treating of his suspension period as such and not allowing the annual

increments so also non-payment of full wages during the period of suspension after he was acquitted from the criminal charges amounts to punishment. When the management has not started any disciplinary proceeding against the workman and without any enquiry put him into financial lose the same in my considered opinion, is in the nature of illegal punishment.

10. The representative of the management during the course of argument relied upon several decisions of the Hon'ble Apex Court and submitted that since the workman was involved in a criminal case he is not entitled to get full wages and other service benefits during the period of suspension. In the case of Ranchhodji Chaturji Thakore *Vrs. The Superintendent Engineer, Gujarat Electricity Board* (Reported in 1997-II-LLJ 663) it was observed that the question of back wages would be considered only if the action was taken by way of disciplinary proceeding and the action was found to be unsustained in law and the workman was unlawfully prevented from discharging the duties. In that context, the conduct becomes relevant. In that particular case, the Hon'ble Court held that since the petitioner had involved himself in a crime (offence of murder punishable under Section 302 of IPC), though he was letter acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under such circumstances the workman was not entitled to payment of back wages. In the present case the workman was not convicted by the trial Court (Learned J.M.F.C., Rourkela), nor the acquittal order was challenged in higher forum. Therefore this decision is not applicable to the facts of the present case. The second decision relied upon by the management is the case of Krishnakant Raghunath Pibhavnekar *Vrs. State of Maharashtra* reported in 1997 I-LLJ-1190. In that case a compositor working in the Government of India Printing Press stood charged of offence of misappropriation under Section 409 of IPC and was acquitted after trial. In his claim for back wages after reinstatement, the Hon'ble Court observed that grant of consequential benefits with all back wages etc. cannot be as matter of course. It would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course, on his acquittal. On a close perusal of the judgement cited, I find, the Hon'ble Apex court did not allow the workman full back wages particularly because he being a Government servant was prosecuted for commission of defalcation of public funds and fabrication of the records. In the present case there is no allegation of the management regarding any criminal conduct of the workman in connection with his duties. The allegation was levelled by the police regarding possession of Arms which was having no concern with the duty assigned by the management. Besides in this case there was no allegation that the management was satisfied regarding Possession of Arms by the workman nor they blamed any conduct of him. Under such circumstance, the decision cited by the management is found to be not applicable to the facts and circumstances of the present case. The management further relies upon a decision of the Hon'ble Apex Court reported in 2004 LLR 1 (*Union of India & others Vrs. Jaipal Singh*). In that case the workman faced trial for a charge under Section 302 of IPC, he was convicted by the Trial Court and was acquitted by the Appellate Court. When his claim for back wages was allowed by the Hon'ble High Court of Punjab & Haryana, the Government preferred appeal and the Hon'ble Apex Court held that the workman would be entitled to gets back wages from the date of his acquittal. It was specifically observed that if after initial conviction by the Trial Court the employee gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service. Since the law obliges a person convicted of a offence to be so kept out and not to be

retained in service. Since in the present case the workman was not found to be guilty for commission of any offence by the Trial Court and the order of acquittal was not challenged in a higher forum, it cannot be said that he should have been kept out of service. The decision cited is therefore, not applicable to the facts of the present case.

11. It is submitted on behalf of the management that their act in not granting increment and full service benefits to the workman was justified in view of the provision in the Standing Order of the Rourkela Steel Plant more particularly the Clause 30 (ii) (h). On perusal of the copy of the Standing Order available on record I find the Order No. 30 (ii) (h) prescribes that the company reserves the right to suspend an employee accused in a Court of Law in any criminal offence involving moral turpitude until the disposal of the trial. The Clause (h) refers to Clauses (d) and (e) of the Order 30 (ii). As per Clause (d), an employee under suspension shall be entitled to get subsistence allowance equal to half of his basic wage plus dearness allowance for the period of his suspension. If the period of suspension exceeds 3 months, for which the employee is not responsible subsistence allowance will be at the rate of 3/4th of his basic wages plus dearness allowance for the period beyond 3 months. The Clause (e) prescribes that if after enquiry, the employee is adjudged guilty of the misconduct and punishment is awarded, he shall not be entitled to get any remuneration for such period other than the subsistence allowance. In the present case the workman was not adjudged to be guilty of committing the alleged offence and therefore it cannot be said that he is disentitled to get remuneration other than the subsistence allowance already paid to him. Since the workman was specifically directed not to enter into the work place during the period of suspension, his non-performance of duty during the said period is due to the act of the management and not of himself. Besides the trial of the Criminal case was not within the control of the workman and the cause of delay of the disposal of the criminal trial is not attributable to his conduct. It is already observed that the management after receipt of the representation of the workman and the copy of the order of acquittal in the criminal case did not reinstate him immediately. Therefore, the second party workman cannot be said to have any fault contributing to the delayed reinstatement.

12. On a close scrutiny of the evidences on record and the discussion made above I am of considered opinion that the first party management have illegally denied the due wage and increment so also other service benefits to the workman Shri Akshaya Kumar Mohanty during the period of his suspension with effect from the 16th November 2005 till 5th September 2007 and the same amounts to illegal punishment. The management was not justified in withholding the regular wage, allowance, increment and other service benefits of the workman Shri Mohanty, Issue No. (i) is accordingly answered in favour of the workman.

13. *Issue No. (ii)*—In view of the discussions on Issue No. (i), I have already found that the management was not justified in withholding the regular wage, dearness allowance, increment and other service benefits to the workman during the period of suspension from 16th November 2005 to 5th September 2007. Therefore, though the workman has been reinstated after being acquitted from the Criminal charge, he is entitled to get full back wages along with regular increments, dearness allowance and other service benefits for the above period of his suspension. The management should be directed to pay full back wages with other benefits to the workman within reasonable period. This issue is accordingly answered in favour of the workman. Hence the Award.

AWARD

The reference is answered on contest in favour of the workman. The alleged illegal punishment imposed upon Shri Akshaya Kumar Mohanty, PL. No. 884432, Senior Carriage Wagon Technician, by the management of SAIL, Rourkela Steel Plant vide their letter reference No. 377—PL-TRM, Dt. 5-9-2007 by way of treating the “period of suspension from 16-11-2005 to till 5-9-2007 as such” is not legal nor justified. The workman is entitled to get full back wages along with regular increments, dearness allowance and other service benefits during the period of suspension from Dt. 16-11-2005 till 5-9-2007. The management is directed to pay the full back wages with other benefits to the workman within 2 (two) months of publication of the award in the Gazette.

Dictated and corrected by me.

SRIKANTA MISHRA
12-9-2012
Presiding Officer
Labour Court
Sambalpur

SRIKANTA MISHRA
12-9-2012
Presiding Officer
Labour Court
Sambalpur

By order of the Governor

J. DALANAYAK
Under-Secretary to Government